

BILL ANALYSIS

C.S.H.B. 2694
By: Smith, Wayne
Environmental Regulation
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Commission on Environmental Quality (TCEQ) has regulatory oversight over air emissions, water use, wastewater discharges, and radioactive and solid waste disposal in Texas. The Legislature created the umbrella structure for addressing environmental quality in 1993, consolidating regulatory programs at the Texas Natural Resource Conservation Commission. The Legislature renamed the agency as the Texas Commission on Environmental Quality in 2001.

The Commission is subject to the Sunset Act and will be abolished on September 1, 2011, unless continued by the Legislature. As a result of its review, the Sunset Commission found that Texas has a clear and ongoing need to regulate environmental quality, but TCEQ needs changes to be able to focus on and be effective in its core duties. This legislation continues the Commission for 12 years and contains several additional statutory modifications. Among other provisions, the bill brings more predictability and authority to the Commission's enforcement processes; restructures the process TCEQ uses to identify and assess regulated entities' performance; improves TCEQ's public assistance function; provides TCEQ additional tools to prevent and remediate groundwater contamination from leaking underground storage tanks and to effectively manage surface water; transfers the responsibility for making recommendations to protect groundwater for certain wells already under the jurisdiction of the Railroad Commission from TCEQ to the Railroad Commission; and provides for funding mechanisms to ensure TCEQ can meet its responsibilities.

In 1987, the Legislature established the On-site Wastewater Treatment Research Council (Council) to award competitive research grants to improve the quality and affordability of on-site wastewater treatment systems and to educate the industry and public about on-site wastewater regulations and innovation. The On-site Wastewater Treatment Research Council has a separate Sunset date of September 1, 2011. While the Sunset Commission found that the State continues to benefit from this research, it did not find a continuing need for an independent entity to administer the program. The Sunset Commission's recommendation to abolish the Council and transfer its functions to TCEQ is also contained in this legislation.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Environmental Quality in SECTION 1.07, SECTION 3.04, SECTION 4.04, SECTION 4.05, SECTION 4.09, SECTION 4.16, SECTION 4.17, SECTION 4.19, SECTION 4.28, and SECTION 5.02 of this bill.

Rulemaking authority is expressly granted to the Railroad Commission in SECTION 2.01, SECTION 2.04, SECTION 2.06, and SECTION 2.08 of this bill.

ANALYSIS

Continues the Texas Commission on Environmental Quality for 12 years.

C.S.H.B. 2694 changes the Texas Commission on Environmental Quality's Sunset date to September 1, 2023 to continue the agency for 12 years. The bill makes conforming changes to change "Texas Natural Resource Conservation Commission" to "Texas Commission on Environmental Quality".

Requires Commission members to resign before accepting campaign contributions.

C.S.H.B. 2694 prohibits a member of the Commission from accepting any campaign contributions for election to an elected office. The bill provides that if a member of the Commission accepts a campaign contribution, the member is considered to have resigned from the Commission and the seat is considered vacant, to be filled in accordance with law.

Applies a standard Sunset across-the-board recommendation.

C.S.H.B. 2694 adds standard Sunset language requiring the Commission to develop a policy that encourages the use of negotiated rulemaking and alternative dispute resolution.

Allows TCEQ to enter into direct award contracts for certain petroleum storage tank remediation projects that transition from the responsible party reimbursement remediation program to the state-lead program.

C.S.H.B. 2694 allows the executive director to directly contract with a person for scientific and technical environmental services if the contract is for a remediation site that is moving from the petroleum storage tank reimbursement program to the state-lead program, the person is registered to perform corrective action under law, the person is eligible to receive a contract from the state, the person was performing work at the reimbursement site on or before July 1, 2011, and the contract includes all required provisions for state contracts.

The bill also allows the executive director to directly contract with a person for engineering services, without adhering to the requirements in §2254.004, Government Code, if the contract is for a remediation site that is moving from the petroleum storage tank reimbursement program to the state-lead program, the person is a licensed professional engineer, the person is registered to perform corrective action under law, the person is eligible to receive a contract from the state, the person was performing work at the reimbursement site on or before July 1, 2011, and the contract includes all required provisions for state contracts. The bill provides that the executive director is not required to enter into a contract, and that nothing prevents the executive director from negotiating contract terms.

Requires TCEQ to focus its implementation of dam safety regulations on the most hazardous dams in the state.

C.S.H.B. 2694 requires the Commission, in performing its duties relating to regulating the safe construction, maintenance, repair, and removal of dams, to identify and focus on the most hazardous dams in the state.

Transfers to the Railroad Commission the responsibility for making groundwater protection recommendations related to drilling activities already under the jurisdiction of the Railroad Commission.

C.S.H.B. 2694 transfers the authority for making groundwater protection recommendations regarding oil and gas activities from TCEQ to the Railroad Commission, which relate to three types of wells: oil and gas wells, injection wells for oil and gas waste, and injection wells for geologic storage of anthropogenic carbon dioxide.

C.S.H.B. 2694 provides for the Railroad Commission to issue to an applicant for a permit for an oil and gas well, a letter of determination related to the depth of surface casing required to exclude surface or fresh water from penetrating oil or gas bearing rock. The bill requires the Railroad Commission to adopt rules regarding the depth of well casings necessary for oil and gas wells. The bill requires the Railroad Commission to adopt rules to establish groundwater

protection requirements for operations within the Commission's jurisdiction. C.S.H.B. 2694 provides that a person applying for a permit to inject oil and gas waste must submit a letter of determination from the Railroad Commission stating that the drilling will not endanger freshwater strata and that the formation or stratum is not freshwater sand. The bill prohibits the Railroad Commission from issuing a permit for injection wells for geologic storage of anthropogenic carbon dioxide until it issues a letter of determination stating that the drilling will not injure freshwater strata and that the formation or stratum is not freshwater sand. The bill provides for the Railroad Commission instead of the TCEQ executive director to review certain factors in making such a determination, and provides for the Railroad Commission instead of the TCEQ Commission to adopt rules.

The bill authorizes the Railroad Commission to charge a fee for groundwater protection determinations for oil and gas wells. This bill requires the Railroad Commission to charge a fee, not to exceed \$75, for an expedited determination letter for oil and gas wells and repeals §5.701(r), Water Code, which authorizes TCEQ to charge a fee for such an expedited letter. C.S.H.B. 2694 makes the Railroad Commission responsible working with other state agencies to study and evaluate electronic access to geologic data and surface casing depths, and specifies that money collected for processing expedited letters may be used for this purpose. The bill provides for the transfer of these functions to the Railroad Commission and requires the Railroad Commission to adopt rules by March 1, 2012.

Focuses TCEQ's public assistance functions.

C.S.H.B. 2694 removes the responsibility of ensuring that the Commission is responsive to environmental and citizen concerns, including environmental quality and consumer protection, from the Office of Public Interest Counsel (Office) and charges the Executive Director with this responsibility for the agency. The bill further charges the Executive Director with creating a program to provide a centralized point for the public to access information, and to identify, assess, and respond to concerns.

C.S.H.B. 2694 provides that the Office of Public Interest Counsel's primary duty is to represent the public interest as a party in matters before the Commission. The bill requires the Office of Public Interest Counsel to annually report, in a public meeting, to the Commission on the Office's performance, budget needs, and legislative and regulatory recommendations, for inclusion in relevant Commission reports. The bill requires the Commission and the Office to work together to identify performance measures for the Office.

The bill requires the Commission to establish, by rule, factors the Office of Public Interest Counsel must consider before deciding to represent the public interest as a party to a commission proceeding. The bill provides that the rules must include factors to determine the nature and extent of the public interest and factors to consider in prioritizing the Office's workload. The bill requires the Commission, in adopting the rule, to consider recommendations from the Office.

Restructures TCEQ's approach to compliance history.

C.S.H.B. 2694 applies TCEQ's compliance history program to subsurface area drip dispersal systems; and programs for removing, collecting, and recovering convenience switches from end-of-life vehicles. The bill makes a technical correction to the definition of applicable legal requirements to consent decree. The bill removes the requirement for a uniform standard for compliance history and requires the Commission to develop standards for evaluating and using compliance history. C.S.H.B. 2694 makes conforming changes consistent with the change to develop a standard to use compliance history, and makes conforming changes throughout the bill relating to the method developed to use compliance history instead of evaluating compliance history.

C.S.H.B. 2694 removes the requirement to include consent decrees and criminal convictions of the federal government related to compliance with legal requirements of the Environmental Protection Agency (EPA) in the components of compliance history. The bill instead requires the components of compliance history to include, to the extent they are readily available, consent decrees and criminal convictions relating to violations of EPA rules, instead of laws, and takes out the requirement to include criminal convictions relating to violations of environmental laws of other states.

C.S.H.B. 2694 removes the requirement that the components of compliance history include notices of violations and instead prohibits the Commission from using notices of violations in using compliance history to escalate penalties, unless the Commission takes subsequent action or the person is classified as a repeat violator as established by criteria elsewhere in the bill. The bill requires the Commission, if it uses a notice of violation in compliance history, to precede the listing with a prominently displayed statement that says "A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the Commission to a regulated entity. A notice of violation is not a final enforcement action nor proof that a violation has actually occurred." The bill provides that a notice of violation administratively determined to be without merit may not be included in compliance history.

C.S.H.B. 2694 prohibits the Commission, for the purposes of listing compliance history or using compliance history in escalation of penalties, from including as a notice of violation deviations or violations reported to the Commission by a person, unless the Commission issues a written notice of violation. The bill authorizes the Commission to consider final enforcement orders or judgments resulting from self-reported deviations or violations as compliance history components in determining compliance history.

C.S.H.B. 2694 adds language to clarify that as a means of evaluating compliance history, the Commission is to establish a set of standards for classification of compliance history in rule. The bill authorizes the Commission to consider the person's compliance history classification when using compliance history in regulatory actions. The bill changes the classification categories required to be in rule relating to standards for classification of compliance history, from "poor" performers to "unsatisfactory" performers, and defines unsatisfactory as performing below minimal acceptable performance standards established by the Commission. The bill further changes the classification of "average" performers to "satisfactory" performers, and defines high performers as regulated entities that have an above-satisfactory compliance record. C.S.H.B. 2694 makes conforming changes throughout the bill consistent with the change in classification categories from *lowest classification to classified as unsatisfactory according to Commission standards*.

C.S.H.B. 2694 authorizes the Commission, in the rules establishing the standards for classification of compliance history, to establish a category of unclassified performers or regulated entities for which the Commission does not have adequate information, and requires the Commission to take into account both positive and negative factors related to the operation, size, and complexity of the site, including whether the site is subject to federal Title V requirements.

C.S.H.B. 2694 requires the Commission, in classifying a person's compliance history, to establish criteria for classifying a repeat violator, giving consideration to the size and complexity of the site at which the violations occurred, instead of the number and complexity of facilities owned or operated by the person, and limiting consideration to violations of the same nature and the same environmental media that occurred in the preceding five years. The bill requires the Commission, in classifying a person's compliance history, to consider the size and complexity of the site, including whether the site is subject to federal Title V requirements, and to consider the potential for a violation at the site that is attributable to the nature and complexity of the site.

C.S.H.B. 2694 removes the requirement to assess the compliance history of entities for which TCEQ does not have adequate compliance information, but continues to authorize TCEQ to require a compliance inspection.

C.S.H.B. 2694 removes the requirement that the Commission use compliance history “classifications” in regulatory decisions to instead provide by rule for the use of compliance history in regulatory decisions. The bill prohibits the Commission, in using a person’s compliance history classification for enforcement purposes, from using the individual components used to determine the compliance history classification in escalating or enhancing penalties.

C.S.H.B. 2694 removes language that prohibited the Commission from performing announced inspections for persons whose compliance history is classified as unsatisfactory according to Commission standards under the conforming change in classification categories. The bill requires the Commission’s strategically directed regulatory structure to include incentives based on a person’s compliance history, instead of a person’s compliance history classification.

C.S.H.B. 2694 requires an evaluation of compliance performance information through a quality assurance and control procedure before the information may be placed on the Internet, and requires that the procedure include a 30-day period for the owner or operator of the site to review and comment on the information.

C.S.H.B. 2694 changes language to allow the Commission to exempt an applicant from requirements for pollution control or abatement under the regulatory flexibility program, if an alternative standard is as protective of the environment, instead of more protective as currently required in law. The bill changes language regarding the evidence an applicant must present to be exempt under this provision unless the applicant can provide evidence that the alternative is as protective of the environment and public health as the method or standard otherwise prescribed by law or rule, instead of requiring the applicant to provide documented evidence of benefits to environmental quality that will result from the applicant’s proposed project as law currently requires. The bill removes the requirement for a “specific” description of the alternative method or standard in the Commission order related to regulatory flexibility. The bill changes the requirement that the Commission “market” the regulatory flexibility program to instead require the Commission to “promote” the program.

The bill provides instructional language that requires TCEQ to adopt new compliance history rules by September 1, 2012 and provides that until the new method is adopted, the Commission will use its current standard.

Requires more transparency in Commission’s enforcement policies, increases the range of TCEQ’s administrative penalties, and provides for flexibility in Supplemental Environmental Projects.

C.S.H.B. 2694 requires the Commission to structure its general enforcement approach in rule, and to regularly assess, update, publicly adopt, and make public online its specific enforcement policies, including its penalty policies.

The bill increases TCEQ’s range of administrative penalties for 20 categories of violations to match civil penalty ranges already in law, including:

- Changing from a cap of \$2,500 per violation per day to a range of \$50 - 5,000 per violation per day for the following categories:
 - Occupational Licenses
 - On-Site Sewage Disposal
 - Used Oil
 - Used Oil Filter

- Water Saving Performance Standards
- Changing from a cap of \$10,000 per violation per day to a range \$50 - 25,000 per violation per day for the following categories:
 - Air Quality
 - Edwards Aquifer
 - Industrial and Hazardous Waste
 - Land over Municipal Solid Waste Landfills
 - Medical Waste
 - Municipal Solid Waste
 - Petroleum Storage Tanks
 - Radioactive Substances
 - Subsurface Excavation
 - Toxic Chemical Release Reporting
 - Underground Injection Control
 - Underground Water
 - Waste Tires
 - Water Quality
- Changing from a cap of \$500 to a range of \$100 – 5,000 per violation per day for public water utilities

The bill provides instructional language that provides that the changes in administrative penalty levels only apply to violations that occur after the effective date of the Act.

C.S.H.B. 2694 authorizes TCEQ to approve Supplemental Environmental Projects for local governments that would bring the respondent into compliance or that is necessary to remediate environmental harm caused by the alleged violation, and defines local government. The bill requires the Commission to develop a policy to prevent entities from avoiding compliance through Supplemental Environmental Projects, including an assessment of the respondent’s financial ability to pay penalties, ability to remediate harm or come into compliance, and the need for corrective action.

Provides tools to prevent and remediate groundwater contamination from leaking underground storage tanks.

C.S.H.B. 2694 prohibits delivery of regulated substances to underground storage tanks unless the tank has been issued a valid and current registration and certification from TCEQ as provided for in other law. The bill authorizes TCEQ to assess administrative penalties for violations, and requires the Commission to adopt rules to enforce this provision. The bill provides instructional language that specifies that this language only applies to a delivery to a storage tank made on or after the effective date of the Act.

C.S.H.B. 2694 authorizes TCEQ to take corrective action to remove underground or aboveground storage tanks that are non-compliant, out of service, pose a contamination risk, and are owned or operated by a person who is financially unable to remove the tank. The bill requires the Commission to adopt rules relating to this provision, including determining financial ability to pay and an assessment of potential contamination risk. The bill authorizes TCEQ to expend funds from the petroleum storage tank remediation account for this purpose.

C.S.H.B. 2694 reauthorizes five petroleum storage tank remediation fees by removing language providing for their expiration on August 31, 2011, and changes the current fee levels to caps. The bill requires the Commission to set fees in rule, and requires that the Commission’s rules must set the amount of the fee in an amount not to exceed the amount necessary to cover the cost of the program, as appropriated to the agency by the Legislature. The bill includes instructional language that provides that applicable delivery fees that exist before the effective date of the Act remains in effect until TCEQ adopts and implements new delivery fees.

Gives TCEQ tools to manage surface water during drought or other emergency conditions.

C.S.H.B. 2694 requires persons with water rights or who impound, divert, or otherwise use state water, to maintain monthly water-use information during the months that the water rights holder uses permitted water. The bill requires water right holders to provide that information to the Commission upon request, and provides that the Commission may only request the information during drought or other emergency shortages. The bill provides that a water rights holder is not required to submit monthly reports with the annual report required by other law. The bill clarifies that these provisions do not affect the authority of a watermaster to obtain water use information under other law.

C.S.H.B. 2694 clarifies the Executive Director's authority during drought or other emergency shortage of water to order a temporary suspension of the right of a water rights holder and adjust the allocation between water right holders. The bill requires the Executive Director, in ordering a suspension or allocation adjustment, to maximize the beneficial use of water, minimize the impact on water rights holders, and prevent the waste of water. The bill requires the Commission to adopt rules to implement this provision, including the conditions under which the Executive Director can use this authority.

C.S.H.B. 2694 requires TCEQ to evaluate the need for additional watermaster programs in basins without a watermaster, at least every five years, and report findings and make recommendations to the Commission. The bill requires the Commission to determine the factors to be considered in this evaluation, and to include findings and recommendations in its biennial report to the Legislature.

Creates a structure for the Legislature to fund the Low-Level Radioactive Waste Disposal Compact Commission.

C.S.H.B. 2694 clarifies that the compact waste disposal fee adopted by TCEQ will include a portion that provides an amount necessary to support the Compact Commission's activities, as required by other law. The bill creates a new General Revenue Dedicated account and requires the Commission to deposit the portion of the compact waste disposal fee allocated to the Compact Commission into the account. The bill provides that money from this account may only be appropriated to support the operations of the Compact Commission.

Streamlines fees for water utility regulation and other water regulatory programs.

C.S.H.B. 2694 adjusts the Water Utility Regulatory Assessment Fee from 0.5 percent to one percent for water supply or sewer corporations and utility districts. The substitute provides that the change to the fee will apply on or after January 1, 2012. The bill provides that assessments collected may be appropriated by rider to an agency with duties related to water and sewer utility regulation. The bill repeals Subchapter L, Chapter 13, Water Code to eliminate three existing water and wastewater utility application fees relating to applications for rate changes; Certificates of Convenience and Necessity (CCN); and the sale, transfer, or merger of a CCN.

Requires electronic copies of water rate case information.

The bill requires the state agency with jurisdiction over water and wastewater utility rates to provide, on request and at a reasonable cost, electronic copies of all water rate case information provided to the agency under statutory provisions relating to a record of proceedings, appellate jurisdiction, and a statement of intent to change rates. The bill specifies that the information is to be provided to the extent that it is available electronically and is not confidential.

Abolishes the On-site Wastewater Treatment Research Council, but continues its grant making function within TCEQ.

C.S.H.B. 2694 abolishes the On-site Wastewater Treatment Research Council and transfers authority to award grants for on-site sewage research to the Texas Commission on Environmental Quality, and makes necessary conforming changes to implement this provision. The bill requires TCEQ to seek input from stakeholder experts when choosing research topics,

awarding grants, and holding educational conferences. C.S.H.B. 2694 provides that the Commission may only disburse money collected and appropriated to award grants. The bill moves the Council's fee revenue from undedicated general revenue to the Water Resource Management Account, and makes necessary conforming changes to implement this provision. The bill repeals §367.002 - 367.006 and §367.011, Health and Safety Code related to the creation and duties of the Council and provides transition language for TCEQ to assume administration of all of the Council's grants and contracts.

Repeals the following statutory provisions.

Water Code, §5.701(r)

Water Code, Subchapter L, Chapter 13

Health and Safety Code, §367.002 - 367.006 and §367.011

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 2694 includes new language not in the original bill that allows TCEQ to enter into direct award contracts for certain petroleum storage tank remediation projects that transition from the responsible party reimbursement remediation program to the state-lead program. Specifically, the substitute allows the executive director to directly contract with a person for scientific and technical environmental services if the contract is for a remediation site that is moving from the petroleum storage tank reimbursement program to the state-lead program, the person is registered to perform corrective action under law, the person is eligible to receive a contract from the state, the person was performing work at the reimbursement site on or before July 1, 2011, and the contract includes all required provisions for state contracts. The substitute also allows the executive director to directly contract with a person for engineering services, without adhering to the requirements in §2254.004, Government Code, if the contract is for a remediation site that is moving from the petroleum storage tank reimbursement program to the state-lead program, the person is a licensed professional engineer, the person is registered to perform corrective action under law, the person is eligible to receive a contract from the state, the person was performing work at the reimbursement site on or before July 1, 2011, and the contract includes all required provisions for state contracts. The substitute provides that the executive director is not required to enter into a contract, and that nothing prevents the executive director from negotiating contract terms.

C.S.H.B. 2694 deletes language in the original bill that provided that the Railroad Commission could use fees collected from making expedited determinations for surface casing recommendations for oil and gas wells *only* for the map digitization project.

C.S.H.B. 2694 clarifies that all of the groundwater protection determinations that TCEQ currently performs for activities under the jurisdiction of the Railroad Commission are transferred by requiring the Railroad Commission to adopt rules to establish groundwater protection requirements for operations within the Commission's jurisdiction.

C.S.H.B. 2694 corrects a drafting mistake to ensure that the Railroad Commission is responsible for issuing the letter of determination for injection wells for geologic storage of anthropogenic carbon dioxide.

C.S.H.B. 2694 modifies provisions relating to restructuring compliance history, by removing language from the original bill that required the Commission to develop a compliance history method to be applied consistently and that may account for differences among regulated entities.

The substitute removes language from the original bill that provided that the components of compliance history are not required to include enforcement orders without punitive sanctions. The substitute removes language from the original bill that expanded the components of compliance history to authorize TCEQ to consider other factors in evaluating compliance history, including positive compliance factors, enforcement orders without punitive sanctions, and complexity, including complexity of regulatory requirements and severity of the consequences of noncompliance.

The substitute removes the requirement for a uniform standard for compliance history, as did the original bill, and requires the Commission to develop *standards*, instead of a *method*, as in the original bill, for evaluating and using compliance history. The substitute adds the following changes not in the original bill to existing law regarding TCEQ's compliance history program.

The substitute applies TCEQ's compliance history program to subsurface area drip dispersal systems; and programs for removing, collecting, and recovering convenience switches from end-of-life vehicles. The substitute makes a technical correction to the definition of applicable legal requirements to consent decree. C.S.H.B. 2694 makes conforming changes throughout the bill relating to the method developed for *using* instead of *evaluating* compliance history.

The substitute removes the requirement to include consent decrees and criminal convictions of the federal government related to compliance with legal requirements of the Environmental Protection Agency (EPA) in the components of compliance history. The substitute requires the components of compliance history to include, to the extent they are readily available, consent decrees and criminal convictions relating to violations of EPA rules, instead of laws, and takes out the requirement to include criminal convictions relating to violations of EPA laws and environmental laws of other states, if they are available.

The substitute removes the requirement that the components of compliance history include notices of violations and instead prohibits the Commission from using notices of violations in using compliance history to escalate penalties, unless the Commission takes subsequent action or the person is classified as a repeat violator as established by criteria elsewhere in the bill. The substitute requires the Commission, if it uses a notice of violation in compliance history, to precede the listing with a prominently displayed statement that says "A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the Commission to a regulated entity. A notice of violation is not a final enforcement action nor proof that a violation has actually occurred." The substitute provides that a notice of violation administratively determined to be without merit may not be included in compliance history.

The substitute prohibits the Commission, for the purposes of listing compliance history or using compliance history in escalation of penalties, from including as a notice of violation deviations or violations reported to the Commission by a person, unless the Commission issues a written notice of violation. The substitute authorizes the Commission to consider final enforcement orders or judgments resulting from self-reported deviations or violations as compliance history components in determining compliance history.

The substitute adds language to clarify that as a means of evaluating compliance history, the Commission is to establish a set of standards for classification of compliance history in rule. The substitute authorizes the Commission to consider the person's compliance history classification when using compliance history in regulatory actions. The substitute changes the classification categories required to be in rule relating to standards for classification of compliance history, from *poor* performers to *unsatisfactory* performers, and defines unsatisfactory as performing below minimal acceptable performance standards established by the Commission. The substitute further changes the classification of *average* performers to *satisfactory* performers, and defines high performers as regulated entities that have an above-satisfactory compliance record.

C.S.H.B. 2694 makes conforming changes throughout the bill consistent with the change in classification categories from *lowest classification* to *classified as unsatisfactory according to Commission standards*.

The substitute authorizes the Commission, in the rules establishing the standards for classification of compliance history, to establish a category of unclassified performers or regulated entities for which the Commission does not have adequate information, and requires the Commission to take into account both positive and negative factors related to the operation, size, and complexity of the site, including whether the site is subject to federal Title V requirements.

The substitute requires the Commission, in classifying a person's compliance history, to establish criteria for classifying a repeat violator giving consideration to the size and complexity of the site at which the violations occurred, instead of the *number* and *complexity of facilities owned or operated by the person*. and limiting consideration to violations of the same nature and the same environmental media that occurred in the preceding five years, instead of considering the number and complexity of facilities owned or operated by the person as is currently required in law. The substitute requires the Commission, in classifying a person's compliance history, to consider the size and complexity of the site, including whether the site is subject to federal Title V requirements, and to consider the potential for a violation at the site that is attributable to the nature and complexity of the site.

The substitute removes the requirement that the Commission use compliance history *classifications* in regulatory decisions to instead provide by rule for the use of compliance history in regulatory decisions. The substitute prohibits the Commission, in using a person's compliance history classification for enforcement purposes, from using the individual components used to determine the compliance history classification in escalating or enhancing penalties.

The substitute removes language that prohibited the Commission from performing announced inspections for person's whose compliance history is classified as unsatisfactory according to Commission standards, under the conforming change for classification categories. The substitute requires the Commission's strategically directed regulatory structure to include incentives based on a person's compliance history, instead of a person's compliance history classification.

The substitute requires an evaluation of compliance performance information through a quality assurance and control procedure before the information may be placed on the Internet, and requires that the procedure include a 30-day period for the owner or operator of the site to review and comment on the information.

The substitute changes language to allow the Commission to exempt an applicant from requirements for pollution control or abatement under the regulatory flexibility program if the alternative standard is *as* protective of the environment, instead of *more* protective as currently required in law. The substitute changes language regarding the evidence an applicant must present to be exempt under this provision, unless the applicant can provide evidence that the alternative is as protective of the environment and public health as the method or standard otherwise prescribed by law or rule, instead of requiring the applicant to provide documented evidence of benefits to environmental quality that will result from the applicant's proposed project, as law currently requires. The substitute removes the requirement for a *specific* description of the alternative method or standard in the Commission order related to regulatory flexibility. The substitute changes the requirement that the Commission *market* the regulatory flexibility program to instead require the Commission to *promote* the program.

C.S.H.B. 2694 corrects a drafting mistake in the original bill that required TCEQ to adopt *rules* instead of a *policy* in the section of the bill related to Supplemental Environmental Projects.

C.S.H.B. 2694 replaces “entity” with “respondent” in the section relating to Supplemental Environmental Projects, to be consistent with language used elsewhere in the bill.

C.S.H.B. 2694 replaces “remediate” with “remove” in the section authorizing TCEQ to remove non-compliant petroleum storage tanks, to be consistent with language used elsewhere in the bill.

C.S.H.B. 2694 adds instructional language not in the original bill to provide that the current fees relating to delivery of petroleum products will remain in effect until TCEQ adopts rules as required under the bill.

C.S.H.B. 2694 clarifies that the provision in the original bill relating to water-use reporting does not apply to the authority of watermasters to obtain water-use information under other law.

C.S.H.B. 2694 corrects a drafting error in the original bill that left out “Disposal” in “Texas Low-Level Radioactive Waste Disposal Compact Commission”.

C.S.H.B. 2694 clarifies that funds from the water utility regulatory assessment fee may be appropriated by rider to a state agency with duties relating to water and wastewater utility regulation. This change gives the Legislature the authority to appropriate funds from this General Revenue Dedicated account to both the Public Utility Commission and the Office of Public Utility Counsel, should they receive new utility duties from TCEQ.

C.S.H.B. 2694 adds instructional language not in the original bill to provide that the change to the water regulatory assessment fee contained in the bill will apply on or after January 1, 2012.

C.S.H.B. 2694 clarifies the provision in the original bill for utilities to provide electronic copies of water rate case information, to ensure that the provision covers all rate filings and not just initial filings; that the agency would only have to provide the information if it is available electronically; and that the agency could provide that information upon request, instead of limiting it to ratepayers.

C.S.H.B. 2694 clarifies that the Commission can only disburse money *collected* and appropriated relating to on-site sewage research grants.